

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

Sandra L. Rigazio (Condon)
746 Back Mountain Road
Goffstown, NH 03045

Plaintiff

v.

CIVIL ACTION NO.:

UniCare Managed Disability
Atlanta Service Center
PO Box 105426
Atlanta, GA 30348-5426

and

Anthem Life Insurance Company
Disability Claims Service Center
PO Box 105426
Atlanta, GA 30348-5426

Defendants

COMPLAINT

Plaintiff, Sandra L. Rigazio (Condon), by and through her attorney, Vincent A. Wenners, Jr., Esquire, complains against the Defendants, Anthem Life Insurance Company and UniCare Managed Disability, and alleges as follows:

1. That the Plaintiff, Sandra L. Rigazio (Condon), is a resident of Hillsborough County, State of New Hampshire.
2. That the Defendants, Anthem Life Insurance Company and UniCare Managed Disability, are corporations having their principal place of business in Atlanta, Georgia.

3. That this is an action for benefits under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 USC §1001 *et seq.*
4. That Venue is proper in this District under 28 USC §1391 and 28 USC §1132(e)(2) because the Defendant resides or may be found in this District and it is the judicial district in which the breach occurred and a substantial part of the events or omissions giving rise to the claim occurred.
5. That under the terms of the Plaintiff’s Disability Policy (hereinafter, the “Policy”), disability is defined as “you are limited from performing the material and substantial duties of your regular occupation due to your sickness or injury; and you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.”
6. That under the terms of the Plaintiff’s Policy, disability benefits will continue beyond twenty four (24) months if “you are working in any competent occupation and continue to have a 20% or more loss in your indexed monthly earnings due to your sickness or injury; or not working and, due to the same sickness or injury, are unable to perform the duties of any gainful occupation for which you are reasonably fitted by education, training, or experience.”
7. That on or about March 9, 2011, the Defendant, upon re-review of the evidence, has confirmed the denial of benefits on February 11, 2010 whereupon the Plaintiff’s disability benefits were terminated claiming she no longer met the definition of disability as quoted in Paragraphs 5 & 6 above.
8. Plaintiff has fully and completely exhausted her administrative remedies and has received a final decision by Anthem Life Insurance Company terminating Short-Term Disability Benefits.

9. That according to reports of Dr. Mary Jo Montanarella (the Plaintiff's primary care physician), dated May 18, 2010 and Dr. Eduardo Quesada (the Plaintiff's pain management specialist) dated April 11, 2011, which was submitted to the Defendant for consideration, the Plaintiff is unable to perform her regular occupation.
10. The Defendant never informed the Plaintiff prior to March 9, 2011, that it relied almost exclusively on the review of the Plaintiff's medical file by on-site physicians, who have never examined or even spoken to the Plaintiff, in denying the Plaintiff's disability benefits and did not consider the reports of Dr. Montanarella.
11. Further, the Defendant stated that Dr. Quesada's Report was necessary in order to make its decision but never advised the Plaintiff that it could not contact him.
12. That the Plaintiff subsequently produced the Reports of Dr. Montanarella and Dr. Quesada, made requests for a true hearing with the right to present evidence, call witnesses, present documents, and cross-examine witnesses, which requests have gone unanswered and the Reports of Dr. Montanarella and Dr. Quesada were still not considered by the Defendant.

WHEREFORE, Plaintiff, Sandra L. Rigazio (Condon), prays the Honorable Court to grant the following relief:

- i. Assume jurisdiction of this cause;
- ii. Review the decisions of the Defendant, Anthem Life Insurance Company;
- iii. Grant a hearing with the right to call witnesses, present documents, and cross-examine witnesses;

- iv. Alternatively, remand this matter to the Defendant with an order to grant a hearing with the right to present evidence, call witnesses, present documents, and cross-examine witnesses;
- v. Grant a decision for disability benefits favorable to the Plaintiff; and
- vi. Grant such other and further relief as the Court deems fair and just.

Respectfully submitted,
Sandra L. Rigazio (Condon)
By her attorney:

Dated: August 9, 2011

/s/ Vincent A. Wenners, Jr.

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